Supreme Court, U.S.

No. 93-402

In The

Supreme Court of the United States

October Term, 1993

DAVID L. EVANS, et al.,

Petitioners,

v.

HERBERT J. HEICHELBECH, III, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Should this Court review the ruling below holding that petitioners' policy barring wards committed to state mental hospitals from utilizing Georgia's civil commitment procedures violates procedural due process, where respondent is no longer committed and petitioners have voluntarily abandoned the policy.

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CONSTITUTIONAL PROVISION INVOLVED

Amendment XIV

Section 1.

[Citizenship Rights Not to Be Abridged by States] [Nor] shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISION INVOLVED

In addition to the Georgia statutes cited by petitioner, respondent refers the Court to the following statutes.

> O.C.G.A. § 29-5-7 Retention and Protection of Rights of the wards; powers retained by and removed from ward; petition upon unjust denial of rights.
>
> (a) Persons determined incapacitated pursuant to this chapter or alleged to be so incapacitated shall not be deprived of any civil, political, personal, or property rights without due process of law.
>
> O.C.G.A. § 29-5-3 Powers and duties of the guardian of the person of an incapacitated adult.
>
> (b) The guardian of the person:
>
> (a) Is entitled to custody of the person of his ward and may establish the ward's place of abode within or outside this state, to the extent of any order by a court of competent jurisdiction relating to detention or commitment of the ward;
>
> O.C.G.A. § 37-3-140 Retention of rights and privileges by patients generally; right to due process.
>
> Patients shall retain all rights and privileges granted other persons or citizens. Notwithstanding any other provision to the contrary, no person who is receiving or has received services for a mental illness shall be deprived of any civil, political, personal or property rights or be

considered legally incompetent for any purpose without due process of law.

INTRODUCTION

In this case, petitioners seek review of the district court's eminently reasonable ruling declaring that the State of Georgia was required, as a matter of procedural due process, to follow its own statutory procedures requiring a civil commitment hearing when a patient seeks release from a state psychiatric hospital and providing periodic judicial review of the propriety of the patient's confinement. Specifically, respondent Herbert J. Heichelbech – who is no longer confined in a state hospital – challenged, and the district court declared invalid, Georgia's policy of not granting hearing rights to patients who challenged their confinement, but whose confinement was nevertheless deemed "voluntary" because their guardians favored continued institutionalization. The district court found that Georgia law did not make such distinctions between involuntary and "voluntary" patients and, thus, created a constitutionally protected liberty interest in all patients confined against their will in state psychiatric institutions. To deny access to Georgia's commitment procedures to patients such as respondent, the district court held, was therefore a denial of due process.

The wisdom of this decision is underscored by the fact that petitioners themselves have abandoned the policy challenged in this lawsuit, which is why the district court refrained from granting injunctive relief,

Heichelbech, 798 F.Supp. at 715, and, in all likelihood, was one of the reasons the court of appeals affirmed summarily without even issuing an opinion. It is all the more reason for this Court to decline to exercise its discretionary jurisdiction. For these reasons and those more fully explained below, the petition for a writ of certiorari should be denied.

STATEMENT OF THE CASE

On May 13, 1988, respondent Heichelbech was involuntarily committed to Central State Hospital, a state psychiatric hospital, under the provisions of Georgia law. Janet Heichelbech, respondent's legal guardian, transferred respondent's legal status to that of a "voluntary" patient on May 26, 1988. On February 15, 1990, March 6, 1990, and March 2, 1991, respondent made formal written requests for his discharge pursuant to the provisions of O.C.G.A. § 37-3-22(a). Respondent was not discharged nor were civil commitment proceedings initiated within three (3) business days after his requests for discharge as required under O.C.G.A. § 37-3-22(a).

Petitioners failed to comply with the provisions of O.C.G.A. § 37-3-22(a) because of a state policy which provided, in part, that if a legal guardian does not concur in the request of an incapacitated adult's request for discharge, then the patient remains a "voluntary" patient under O.C.G.A. § 37-3-20. Under this policy, respondent was neither discharged nor provided with a civil commitment hearing to determine his need for involuntary hospitalization following his requests. Respondent was

denied release under legal process afforded all other voluntary patients even though he, at times, did not meet the criteria for civil commitment and had received maximum benefit from hospitalization. Finally, on August 14, 1991, respondent was discharged from the hospital into a community placement and his guardian consented to this discharge. Pet. App. B at 5a.

On April 11, 1991, prior to respondent's discharge, respondent filed a civil rights action under 42 U.S.C. § 1983 against petitioners alleging violation of his rights to due process and equal protection under the fourteenth amendment to the United States Constitution and requesting injunctive and declaratory relief and damages.[1] Respondent sought declaratory and injunctive relief from petitioners' policy of not discharging or initiating involuntary commitment proceedings for "voluntary" patients without the consent of the patient's legal guardian.

On Respondent's motion for partial summary judgment, the district court found that he was deprived of procedural due process on two grounds. First, the district court determined that respondent was deprived of a liberty interest arising under state law. Because the petitioners failed to comply with its own procedures created

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[1] The district court granted James Reid, III and May I. Fleming's motion to intervene in this case as plaintiffs under FED.R.CIV.P. 24. The court did not rule upon the merits of each plaintiff-intervenor's claim, *Heichelbech, infra*, 798 F.Supp. at 710, finding it unnecessary to do so, and their claims have not been pressed further. At this time, both plaintiff-intervenors have been released from the hospital.

under state law after respondent requested discharge, he was deprived of this state-created liberty interest. Second, the district court ruled that respondent had a constitutionally protected interest in being free from involuntary confinement. Due process, the court held, requires that respondent be afforded a judicial review to challenge his need for involuntary hospitalization. The district court held that the state's policy of denying respondent his right to challenge his involuntary hospitalization except upon the request of his legal guardian violated due process. Accordingly, the district court granted respondent's request for declaratory relief against petitioner's practice of refusing to invoke the procedures in O.C.G.A. § 37-3-22 for voluntary patients with legal guardians. Respondent had been released from the hospital in August, 1991 and petitioners agreed to comply prospectively with the district court's interpretation of O.C.G.A. § 37-3-22(a). Therefore, the district court did not grant injunctive relief. *Heichelbech v. Evans*, 798 F.Supp. 708, 715 (M.D.Ga. 1992).

On Petitioner's motion for summary judgment, the district court denied respondent's claim that petitioners denied his right to equal protection. The district court also ruled against respondent's claim for damages finding that petitioners were entitled to qualified immunity. *Id.* at 715-16.

The Court of Appeals for the Eleventh Circuit affirmed the district court's decision without opinion. 995 F.2d 237 (11th Cir. 1993).

REASONS FOR DENYING THE WRIT

I. THE COURT OF APPEALS' DECISION DOES NOT CONFLICT WITH THE DECISIONS OF THIS COURT AND THERE IS NO CONFLICT IN THE CIRCUIT COURTS.

The primary focus of the petition is that the district court's analysis is inconsistent with *Parham v. J.R.*, 442 U.S. 584 (1979). Pet. Br. 7-8. As the district court enunciated, there are several important distinctions between the circumstances of *Parham* and those in this case. *Heichelbech*, 798 F.Supp. at 714.

First, *Parham* deals exclusively with minors while this case presents an issue concerning an incapacitated adult. As the district court noted, there is a significant difference between a parent and a minor child and the relationship between a guardian and ward. *Heichelbech*, 798 F.Supp. at 714, *citing Doe v. Austin*, 848 F.2d 1386 (6th Cir. 1988), *cert. denied*, 488 U.S. 967 (1988).

In *Doe*, the court stated that, "once someone becomes an adult, one's parent loses that degree of authority found so crucial in *Parham*." *Doe*, 848 F.2d at 1393, *citing Clark v. Cohen*, 613 F.Supp. 684, 699 (E.D.Pa. 1985), *aff'd*, 794 F.2d 79 (3d Cir.), *cert. denied*, 479 U.S. 962 (1986). The Sixth Circuit also found that the interests of the parents in avoiding "significant intrusion into the parent-child relationship as pointed out in *Doe* is not as great in the case of the adult." *Doe* at 1393. The Sixth Circuit further reasoned that the interest of parents in avoiding "significant intrusion into the parent-child relationship," as noted in *Parham*, 442 U.S. at 610, is simply not as great in the case of an adult. *Id*

The district court in *Heichelbech* adopted the reasoning of the Sixth Circuit in *Doe* and rejected petitioners' contention that the procedure for admitting a minor by his parents to a mental hospital in *Parham* is analogous to the situation faced by respondent. *Heichelbech*, 798 F.Supp. at 714. The district court found that Heichelbech was not a "voluntary" patient because he did not consent to his confinement and he requested discharge. Therefore, his legal status was involuntary. *Id. citing Doe v. Austin*, 848 F.2d 1396 (6th Cir.), *cert. denied*, 488 U.S. 967 (1988).[2]

The issue raised by petitioners – which is whether guardians can exercise unfettered control over their *adult* ward's confinement – was fully considered in *Doe*. If this Court denied certiorari in *Doe*, being fully aware of its holding in *Parham*, then it should deny certiorari here as well, because there continues to be no split in the lower federal or state courts. Moreover, this case is even less a candidate for review than *Doe* was because here as the district court held, the state's statutes themselves unambiguously provided respondent with a right to challenge his confinement to a state mental hospital, whereas in *Doe*, the state statutes denied wards that right.

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[2] Petitioners erroneously rely upon this Court's decision in *Heller v. Doe*, ___ U.S. ___, 113 S.Ct. 2637, 125 L.Ed.2d 257 (1993) in support of their argument that this Court grant certiorari. Pet. Br. 14. But *Heller* raised an entirely different issue not implicated here – namely, whether a state's disparate treatment of mentally ill and mentally retarded patients is rational for equal protection purposes, and whether parents of mentally retarded patients can participate as intervenors in commitment proceedings.

Last, the district court specifically noted that *Parham* only addressed what process is due a child upon admission to a state mental hospital, and reserved the question of what process is due after the child is admitted to the hospital. *Id.* at 607 n. 15 & 619. The district court in *Heichelbech* correctly pointed out this distinction by recognizing that respondent was not challenging his admission to the hospital. *Heichelbech*, 798 F.Supp. at 714. Therefore, petitioners' reliance on *Parham* is misplaced.

Petitioners' reliance on *Mills v. Rogers*, 457 U.S. 291 (1982) for their substantive due process argument is also misplaced. Pet. Br. 9. Petitioners incorrectly analyze *Mills* for the proposition that a state-created liberty interest must be judged under a substantive due process standard and that petitioners' conduct under such standard must shock the conscience and offend the community's sense of fair play and decency. Pet. Br. 9-10. The district court's opinion in *Heichelbech* focused exclusively on petitioners' *procedural* due process violation and did not address *substantive* due process at all. *Heichelbech*, 798 F.Supp. at 711. Thus, petitioner's reliance upon *Rochin v. California*, 342 U.S. 165 (1952) is also without merit.

Even if the post-*Parham* unanimity of the Sixth and Eleventh Circuits were not enough to demonstrate that review is unwarranted here, there are two additional factors which weigh heavily in respondent's favor. First, as noted above, the petitioners themselves have abandoned the policy that was challenged in the complaint. Pretermitting whether there is sufficient adversariness to invoke this Court's Article III jurisdiction, because petitioners seek only an abstract ruling that the district court's declaratory judgment was unlawful, there surely

is no compelling reason to grant review. In fact, this is why the district court refrained from issuing a preliminary injunction. *Id.* at 715. Furthermore, the district court's decision does not compel petitioners to do anything so that a ruling by this Court on issues raised by petitioners would have no practical consequences for the parties.

Second, the respondent is no longer confined in a state mental hospital and, therefore, his liberty interest would not be affected by a decision of this Court. Because there are no other plaintiffs presently in this litigation, and respondent's damage claim against the state officials was dismissed on qualified immunity grounds, *id.*, neither respondent nor petitioners have anything concrete at stake. Thus, even assuming that the theoretical legal issue presented here is as critical as petitioners contend, a fact belied by the court of appeal's summary affirmance, this case presents a remarkably poor vehicle for exploring it.

This case does not conflict with any relevant decision of this Court, the court of appeals of any circuit, or the Supreme Court of any state. Sup. Ct. R. 10.1(a); *National Ass'n. of Greeting Card Pub. v. U.S. Postal Service*, 462 U.S. 810 (1983). The ruling below is consistent with Georgia statutes that provide due process for individuals confined to state institutions. The Court of Appeals' holding does no more than recognize the importance of permitting wards to avail themselves of state-created procedural rights. *See Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 431 (1982).

The district court in *Heichelbech* correctly analyzed respondent's state-created liberty interests that are entitled to federally protected due process protections. The district court found that the language of O.C.G.A. § 37-3-22(a) is unambiguous and provides that all voluntary patients, including those with legal guardians, have the right to request discharge, or in the event discharge is denied, the right to be afforded an involuntary commitment hearing. The district court held that petitioners misconstrued this statute, which the court found to be in conflict with the State *policy* regarding discharge of voluntary patients with legal guardians. *Heichelbech*, 798 F.Supp. at 711. The real question petitioners raise in their petition is their interpretation of their State *policy*.

The district court in *Heichelbech* acted consistently with *Mills* by holding that Georgia's mental health and guardianship statutes for civil commitment contain mandatory language such as "shall" and "must" that require petitioners to give all voluntary patients the right to be discharged or to be afforded an involuntary commitment hearing.[3] Because these statutes contain language of an "unmistakably mandatory character", the State created a protected liberty interest to be free from unwarranted hospitalization for respondent that was entitled to due process protections. *Heichelbech*, 798 F.Supp. at 712. See also *Mills v. Rogers*, 457 U.S. 291, 300 (1982); *Hewitt v. Helms*, 459 U.S. 460, 470 (1983); *Vitek v. Jones*, 445 U.S. 480, 488 (1980). This holding does not create any new federal

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[3] *See, e.g.*, O.C.G.A. §§ 29-5-7(a), 37-3-1 to 37-3-81.1, 37-3-140.

rights – it only breathes life into State statutes that afford broad procedural rights. *See Logan*, 455 U.S. at 431-32.

II. THE COURT OF APPEALS' DECISION DOES NOT DECLARE UNCONSTITUTIONAL ANY GEORGIA STATUTE.

Respondent did not challenge the constitutionality of any Georgia statute but rather a state *policy* that conflicted with Georgia mental health and guardianship statutes and the federal Constitution. The district court upheld the applicable Georgia statutes as supporting respondent's claim that the state *policy* was unconstitutional. Petitioners, therefore, misrepresent that the Court of Appeals erroneously voided Georgia's statute providing for hospitalization of wards. Pet. Br. 12.

To counter petitioners' misrepresentation, the findings and holding of the district court's opinion should suffice. The district court states that plaintiff and plaintiff-intervenors sought declaratory and injunctive relief against defendants for "their *policy* of not discharging a voluntary patient from a state mental hospital without the consent of the patient's legal guardian." *Heichelbech*, 798 F.Supp. at 710 (emphasis supplied). The district court also stated that plaintiff and plaintiff-intervenors sought a declaratory judgment that the State *policy* violated their rights to due process and equal protection under § 1983. *Id.*

Petitioners' argument that the Court of Appeals struck down Georgia's statute providing for hospitalization of wards also erroneously states that the district court, for all practical purposes, has denied a guardian

the right to admit a ward to a state mental hospital. Pet. Br. 12. Respondent did not raise this argument in the district court nor the Court of Appeals. *See Heichelbech*, 798 F.Supp. at 714. Petitioners raise this issue for the first time on appeal. It was not addressed by the Court of Appeals nor should it be by this Court.

CONCLUSION

For these reasons, the Petition for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Eleventh Circuit in *Heichelbech v. Evans* should be denied.

Respectfully submitted,

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